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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,148	11/17/2003	Michael D. Seidman	MDS-10202/03	4310
25006	7590	07/18/2005	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			ROYDS, LESLIE A	
			ART UNIT	PAPER NUMBER
			1614	
DATE MAILED: 07/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,148

Applicant(s)

SEIDMAN, MICHAEL D.

Examiner

Leslie A. Royds

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,11,12,14,15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11,12,14,15 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 1,11 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-2, 4-9, 11-12, 14-15 and 17-21 are presented for examination.

Applicant's Amendment filed June 29, 2005 has been received and entered into the application. Accordingly, the specification at page 11, claims 1-2, 4-9, 11-12, 14-15 and 17-21 have been amended and claims 3, 10, 13 and 16 have been cancelled.

In view of the above amendments and Applicant's remarks at pages 7-9 of the amendment, the objections to the claims, with the exception of the claim objection at the bottom of page 2 of the previous Office Action insofar as the objection applies to claims 1, 11 and 20, and the objections to the specification, with the exception of the objection to the specification at page 4, are hereby **withdrawn**.

Objection to the Claims

Claims 1, 11 and 20 remain objected to for failing to consistently refer to "+/- alpha-lipoic acid" as such. See particularly line 7 of claim 1, for example. Applicant may wish to consider amending the claims in the following manner in order to obviate the objection:

---1. (Currently Amended) A nutritional supplement comprising at least two components administered in effective daily dosages selected from the group consisting of:

25-2500 mg +/- alpha-lipoic acid,

50-7500 mg acetyl-L-carnitine,

25-2500 mg resveratrol;

100-5000 mg lecithin; and

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30-6000 mg N-acetyl cysteine with the proviso that the +/- alpha lipoic acid and the acetyl-L-carnitine are not administered together.---

Objection to the Claims (New Ground of Objection)

Claims 11 and 20 are objected to for not setting forth the claim limitations in a clear manner. Applicant is requested to amend the following limitation of the claim for clarity: "...with the proviso that the composition lipoic acid and the acetyl-L-carnitine are not administered together." e.g., by deleting the word "composition".

Objection to the Specification

The disclosure is objected to because of the following informalities:

(i) the acronyms "COX" and "SDH" at page 3, line 3 of the disclosure and the acronym "ADAS" at page 22, line 13 of the disclosure should be defined at their first occurrence in the specification; and

(ii) the phrase "mtDNA del" at page 18, line 4 of the disclosure should be defined at its first occurrence in the specification.

Appropriate correction is required.

Claim Rejection - 35 USC § 103

The text of those sections of Title 35, U.S.C. §103 not included in the instant action can be found in the previous Office Action.

Claims 1-21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Chopra (U.S. Patent No. 6,300,377 B1; 2001) in view of Stedman's Medical Dictionary (1972; p.1243), Garrett and Grisham's *Biochemistry* (1999; p.244-247), The Merck Index (1992; Monograph 9255) and Drug Facts and Comparisons (1996; p.1064-1070), each of record, for the reasons of record as set forth in the previous Office Action dated March 29, 2005 at pages 4-11.

Applicant's traversal of the rejection under 35 U.S.C. §103 has been fully and carefully considered, including the entirety of the case law cited within Applicant's remarks, but fails to persuade the Examiner of error in her determination of obviousness.

Applicant states, "It is respectfully submitted that the Examiner has not met this burden and the extensive testing set forth in the specification was necessary to establish the novel limitations of the claims. Reconsideration and allowance are accordingly solicited." (see pages 8-9 of Applicant's remarks)

The Examiner disagrees. The references cited in the previous Office Action provide sufficient evidence that not only would a combination of the references have been obvious to the skilled artisan, but also that there existed sufficient motivation to combine the references for the reasons already made of record and set forth in the previous Office Action. Moreover, Applicant has not substantiated the allegation that the Examiner has not met the burden of determining obviousness by presenting any evidence in support of this position. Absent such, Applicant's assertion that the Examiner has not met her burden of demonstrating that the presently claimed subject matter would have been obvious is not found to be persuasive.

Furthermore, the Examiner notes Applicant's statement that "the extensive testing set forth in the specification was necessary to establish the novel limitations of the claims", but

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reminds Applicant that the rejection under 35 U.S.C. §103 was made on the determination of the obviousness of the claim limitations, not the novelty of the claim limitations.

In further response thereto, Applicant's arguments also fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

The Examiner, therefore, maintains the rejection of all pending claims as being obvious over the references cited above for the reasons already made of record at pages 4-11 of the previous Office Action dated March 29, 2005.

Conclusion

Rejection of claims 1-2, 4-9, 11-12, 14-15 and 17-21 is deemed proper and is **maintained**.

No claims of the present application are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

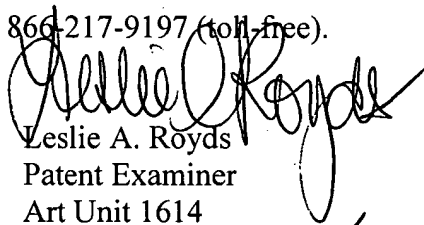
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however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

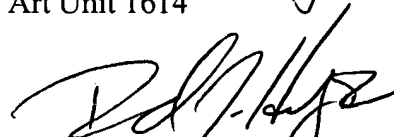
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie A. Royds whose telephone number is (571)-272-6096. The examiner can normally be reached on Monday-Friday (8:30 AM-6:00 PM), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571)-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leslie A. Royds
Patent Examiner
Art Unit 1614

July 13, 2005


RAYMOND HENLEY III
PRIMARY EXAMINER
Au 1614